

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

<b>GEOFFREY WILLARD ATWELL</b>	:	<b>CIVIL NO. 1:CV-06-1047</b>
	:	
<b>Plaintiff</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>M.R. METTERAU; C.R. STICKLER;</b>	:	
<b>and KELLY GALLAGHER,</b>	:	
	:	
<b>Defendants</b>	:	

**MEMORANDUM AND ORDER**

Before the court is an action brought pursuant to 42 U.S.C. § 1983 along with Plaintiff's request to proceed *in forma pauperis*. Plaintiff is not a prisoner but he brings this suit on facts which occurred while he was a prisoner.

Plaintiff has filed an affidavit in that qualifies him to proceed *in forma pauperis*. The court will, therefore, examine Plaintiff's complaint under the provisions of 28 U.S.C. § 1915.<sup>1</sup> At the time of the actions alleged by Plaintiff, all Defendants were employed at the Pennsylvania State Correctional Institution at Dallas ("SCI-Dallas"). The defendants are prison guards M.R. Metterau and C.R. Stickler, whom Plaintiff alleges took some of his personal items and refused to return same. Also named as a Defendant is Kelly Gallagher, a physician's assistant

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<sup>1</sup>Section 1915(a) has been applied to all persons applying for *in forma pauperis* status, not just to prisoners. See *Martinez v. Kristie Kleaners, Inc.*, 364 F.3d 1305, 1306 n.1 (11<sup>th</sup> Cir. 2004). See also *Haynes v. Scott*, 116 F.3d 137, 140 (5<sup>th</sup> Cir. 1997); *Floyd v. United States Postal Serv.*, 105 F.3d 274, 275 (6<sup>th</sup> Cir. 1997); *Powell v. Hoover*, 956 F. Supp. 564 (M.D. Pa. 1997).

formerly employed at SCI-Dallas, whom Plaintiff alleges deprived him of proper medical care on July 22, 2002, which amounts to a deliberate indifference claim.

The claim against Kelly Gallagher has previously been addressed by this court in case number 1:CV-03-1728. By order dated March 13, 2005 (doc. 108), the same claim was dismissed and Gallagher was dismissed from that suit. A subsequent motion for reconsideration was denied by order dated March 30, 2006 (doc. 119). The instant claim amounts to harassment against Gallagher. Any further attempts by Plaintiff to renew this same claim against Gallagher will be met with appropriate sanctions. Gallagher will be dismissed from this action.

This court will grant Plaintiff leave to proceed *in forma pauperis* and direct the service of the complaint and summons upon the remaining Defendants. Plaintiff is advised that he is responsible for service in accordance with the Federal Rules of Civil Procedure. Plaintiff is no longer a prisoner and is not entitled to service of process without cost by the United States Marshal. Plaintiff's grant of *in forma pauperis* status applies only to the waiver of the \$350 filing fee.

Accordingly, **IT IS HEREBY ORDERED THAT:**

- 1) Plaintiff is granted leave to proceed in forma pauperis;
- 2) Kelly Gallagher is dismissed from the captioned action and the Clerk of Court shall remove her name from the caption of this action.
- 3) The Clerk of Court shall prepare the summons and provide it to Plaintiff for service.

4) Plaintiff shall serve the complaint and summons pursuant to Federal Rule of Civil Procedure 4.

5) Defendants shall respond within twenty (20) days after the date of service.

s/Sylvia H. Rambo  
SYLVIA H. RAMBO  
United States District Judge

Dated: June 20, 2006.